Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *A. C. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 30

Tribunal File Number: GE-15-2749

BETWEEN:

A. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: December 23, 2015

DATE OF DECISION: February 26, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, A. C., was present at the telephone hearing (teleconference) on December 23, 2015.

INTRODUCTION

[2] On May 1, 2015, the Appellant made an initial claim for benefits that took effect on April 26, 2015. The Appellant reported having worked for the Employer, Mission Electrical Systems Ltd., from June 16, 2014 to December 20, 2014 inclusive, and having stopped work for that employer after leaving voluntarily (Exhibits GD3-3 to GD3-17).

[3] On June 11, 2015, the Respondent, the Canada Employment Insurance Commission (the "Commission"), notified the Appellant that he was not entitled to receive regular employment insurance benefits as of April 26, 2015 because he had stopped work voluntarily for the Employer, Mission Electrical Systems Ltd., on December 20, 2014 without just cause under the *Employment Insurance Act* (the "Act") (Exhibits GD3-21 and GD3-22).

[4] On July 9, 2015, the Appellant filed a Request for Reconsideration of an Employment Insurance Decision (Exhibits GD3-23 to GD3-25).

[5] On August 12, 2015, the Commission notified the Appellant that it was upholding the decision in his case dated June 11, 2105 regarding his voluntarily leaving the Employer, Mission Electrical Systems Ltd. (Exhibits GD3-28 and GD3-29).

[6] On August 13, 2015, the Commission notified the Employer that it was upholding the decision in the Appellant's case dated June 11, 2015 regarding his voluntarily leaving (Exhibit GD3-30).

[7] On August 25, 2015, the Appellant filed a Notice of Appeal with the Employment Insurance Section of the General Division of the Social Security Tribunal of Canada (the "Tribunal") (Exhibits GD2-1 to GD2-9).

[8] On September 3, 2015, the Tribunal informed the Employer, Mission Electrical Systems Ltd., that if it wanted to become an "added party" in this case, it would have to file a request to that effect by September 18, 2015 (Exhibits GD5-1 and GD5-2). The Employer did not respond to that request.

[9] This appeal was hear by teleconference for the following reasons:

a) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit (Exhibits GD1-1 to GD1-4).

ISSUE

[10] The Tribunal must determine whether the Appellant had just cause for voluntarily leaving his employment under sections 29 and 30 of the Act.

THE LAW

[11] The provisions relevant to voluntarily leaving are set out in sections 29 and 30 of the Act.

[12] With respect to the application of sections 30 to 33 of the Act concerning disqualification from receiving employment insurance benefits in the case of "leaving without just cause", subsection 29(c) of the Act states:

> . . . just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following: (i) sexual or other harassment, (ii) obligation to accompany a spouse, common-law partner or dependent child to another residence, (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act, (iv) working conditions that constitute a danger to health or safety, (v) obligation to care for a child or a member of the immediate family, (vi) reasonable assurance of another employment in the immediate future, (vii) significant modification of terms and conditions respecting wages or salary, (viii) excessive overtime work or refusal to pay for overtime work, (ix) significant changes in work duties, (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism, (xi) practices of an employer that are contrary to law, (xii) discrimination with regard to employment because of membership in an association, organization or union of

> workers, (xiii) undue pressure by an employer on the claimant to leave their employment, and (xiv) any other reasonable circumstances that are prescribed.

[13] Subsections 30(1) and 30(2) of the Act provide as follows concerning a "disqualification" from receiving benefits:

> . . . (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless (a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or (b) the claimant is disentitled under sections 31 to 33 in relation to the employment. (2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

EVIDENCE

[14] The evidence in the file is as follows:

a) A record of employment dated January 5, 2015 indicates that the Appellant worked as an electrician for the Employer, Mission Electrical Systems Ltd., from June 16, 2014 to December 20, 2014 inclusive and that he stopped working for that employer after leaving voluntarily (Code E – Quit) (Exhibit GD3-18).

b) On May 1, 2015, the Appellant stated: [translation] "I am resigning because of excessive overtime" (Exhibits GD3-3 to GD3-17).

c) On June 10, 2015, the Employer stated: [translation] "the claimant left this employment to take a more profitable one . . . the claimant mentioned that he had found another job in the North that was only two people: him and his supervisor. . . . the claimant never complained about overtime or the fact that his colleagues were smoking weed. . . . The Employer stated that during the initial training, it told the claimant that overtime was not paid in cash because of the situation that the industry was currently experiencing, but that employees had the option of asking to be paid in vacation time or in time. The Employer also stated that overtime is not mandatory, that no one forced the claimant to work overtime and that if he still decided to work it, he could always choose to be paid in cash" (Exhibit GD3-20).

d) In his Request for Reconsideration of an Employment Insurance Decision filed on July 9, 2015, the Appellant reported: [translation] “The company required us to work overtime without paying us for the time. We would meet on Mondays, pick up the supplies we needed, and the foreman drove us to a house where six or seven of us lived until Friday. We worked between 50 and 60 hours per week, most of the time it was closer to 60 and usually, we left in the early afternoon on Fridays to return home. Sometimes, even the boss complained after having worked 60 hours per week without being paid for the overtime. During the week, we all lived in the house and people used drugs, specifically cocaine and marijuana. It was simply not a good environment to live in. The morning that I gave my two weeks’ notice, they had told us that we had to wash the company trucks without being paid. I am not a charity and I do not work for nothing; I had already worked overtime without being paid, I did not want to wash a company truck that I did not use” (Exhibit GD3-24).

e) On August 12, 2015, the Employer stated that it did not remember very well the circumstances related to the Appellant’s leaving voluntarily and that there was nothing special in his file. According to the Employer, the Appellant allegedly quit his employment stating that he had other employment with a member of his family (Exhibit GD3-27).

f) In his Notice of Appeal filed on August 25, 2015, the Appellant stated: [translation] “I am appealing the decision because I believe that my reasons are valid. First, the company for which I worked sent us hours away from home from Monday to Friday. All the employees lived in the same house that the company rented during this time; there was usually six or seven of us. Then, the company expected us to work up to 12 hours per day without paying us overtime. Sometimes, after working almost 60 hours during the week, we left at noon on a Friday and they complained that we should have stayed until at least 5:00 p.m. Even though we had already worked about 55 hours without being paid for our overtime. I even told my boss that I wanted to be paid for the overtime but he said it was not possible. Second, the people with whom I was living were partying all week by drinking, smoking marijuana and using cocaine, which kept me awake part of the night. My foreman did not sleep the entire night on several

occasions and he went to work the next day. Most of the employees smoked, even marijuana, with their electronic cigarettes while working. One day, my foreman left a worksite by backing up the company truck without closing the door and tore the truck's door off. He called the head of the company and told him and the boss did nothing. They did not make a report or screen for drugs because they knew that he would have been thrown off the site and they needed him. When I was working as an electrician, I felt that my safety was at risk with people who were using drugs while at work. Many things can happen when someone is not in their normal state of mind. For example, as an electrician, they might have turned on the breaker while I was working and that I would have been electrocuted. My boss even knew that they were using drugs in the house because, after work, he sometimes dropped things off and spent time with them, and afterwards, I was usually tired the next day at work because they had kept me awake part of the night. I even called my friend a few times to tell him how ridiculous this environment was and he told me to leave because of all the things that were going on. Third, because I am a Francophone from Quebec, my boss and other employees laughed at me, calling me "frenchy" and telling me that I wanted to separate from Canada. I felt somewhat intimidated, which stopped me from talking to him about the fact that I was upset about the drugs in the house and at work and that I felt unsafe working there. They certainly would have hated me even more if I had talked to him about that. Moreover, he already knew it and had done nothing. The day that I gave my two weeks' notice, we had a meeting in the morning and since all of the trucks that the foremen were using were too dirty, they told all of the employees, not just the foremen who took these trucks home, that they had to wash them without being paid. I had already started looking for other employment a few weeks earlier because I did not want to work and live in that type of environment, without pay or pay for overtime, with the danger of working when tired all week because employees were keeping me awake at night in the house and because I did not want to work with people with reduced faculties. After applying for many jobs over a few months without success, I made an employment insurance claim and a short time later I had to go back to live with my mother in New because of my finances" (Exhibits GD2-5 and GD2-6).

g) In his Notice of Appeal, the Appellant provided a copy of a pay stub from the Employer dated December 12, 2014 indicating that he has been paid at the regular rate of $18.00 (Exhibit GD2-7).

[15] The following evidence was adduced at the hearing:

a) The Appellant reviewed the main elements in the file and circumstances that led him to voluntarily leave his employment with the Employer, Mission Electrical Systems Ltd., on December 20, 2014. He explained that he did not make his claim for benefits until May 2015 because he had thought he would be able to find employment quickly. The Appellant specified that he had made his claim for benefits at that time because he had started to run out of money (Exhibits GD2-5 and GD2-6).

b) The Appellant explained that during his period of employment with the Employer, Mission Electrical Systems Ltd., he had lived in X, Alberta and that the distance he had to travel between X and X was about three and a half hours [return]. He stated that he had carpooled with the company's foreman to get to the worksites and had the remained there the entire week. The Appellant explained that when he worked in X, he lived in a house at the worksite with other employees. He recounted that several events had occurred while he was working in that location and living in that house (e.g.: drug use or consumption of alcohol by employees, safety problems and intimidation) (Exhibits GD2-5, GD2-6, GD3-3 to GD3-17 and GD3-26).

c) He explained that he had not discussed with the Employer the problems that occurred at the house where he lived during his work week because the Employer knew what was going on. The Appellant stated that the boss, J. P., who had hired him, went to the house during the week to bring supplies. The Appellant stated that, at those times, his boss had seen that employees were drinking or taking drugs. He said that he had not asked the Employer for a transfer (Exhibits GD2-5 and GD2-6, GD3-24 and GD3-26);

d) The Appellant reported that in December 2014, on the day after the incident where his foreman had dented a door of the van that the latter was driving (Exhibits GD2-5 and GD2-6), the same foreman had also backed his van into the house where the employees

lived, putting a hole in it. The Appellant also recounted having been woken up by the fire alarm in the middle of the night because one of his fellow workers, who lived in the same house as he did, had left a pizza burning in the oven overnight. The Appellant stated that he had reported this incident to his boss but the latter had not done anything except mention, at a work meeting with employees, to not forget pizzas in the oven. The Appellant also recounted being woken up at three in the morning because employees coming back from the bar had forgotten their house key.

e) He explained that he had not reported the problems he had had when he worked in X to his employer because the employees with whom he worked called him “frenchy” or “separatist” and he wanted to keep the peace with them. He said that he did not want “to have trouble at work” or for everyone in his workplace to hate him. He claimed that if he had talked about this problem, everyone, or some of his colleagues, would have hated him more (Exhibits GD2-5 and GD2-6).

f) The Appellant explained that the situation he had described when he had worked in X had not existed when he started working for the Employer. He explained that he had first worked in X, Alberta with three other employees to complete a job from June to August 2014. The Appellant stated that he had lived at that time in a hotel room with a colleague, that that individual did not use drugs or drink alcohol, and that everything had gone well at that time. He pointed out that it had been much better than when he had had to work in X. The Appellant explained that he had then worked in X, in the city where he lived, for about one and a half months until mid-October 2014. He indicated that he had then begun working in X and had worked there until he left voluntarily in December 2014.

g) The Appellant pointed out that the statements made by the owner of the company (L. H.) on June 10, 2015 and August 12, 2015 were not made by the person who had hired him. He emphasized that the company’s owner was not at the worksites most of the time (Exhibits GD3-20 and GD3- 27).

PARTIES' ARGUMENTS

[16] The Appellant presented the following observations and submissions:

a) The Appellant first explained that he had left his employment because the Employer was not paying him the overtime he had worked at the "extra rate" (time and a half). He clarified that he had worked an average of 60 hours per week. The Appellant indicated that when he had accepted his employment, he had not thought he would have to work so much overtime. He stated that the Employer had not paid him at time and a half for the overtime worked, but that he had been paid at the same rate as his normal hours. The Appellant stated that he had explained to the Employer that he was leaving his employment because he was not being paid time and a half for the overtime that he had worked. He explained that he had discussed this situation with the Employer but that nothing had changed because the Employer thought it was complying with the agreement that had been made with the Appellant. At the hearing, the Appellant clarified that, at the time he had been hired, he had known that he would have to work overtime. He stated that the issue of compensation had been discussed with the Employer when he had been hired, including the compensation for overtime (Exhibits GD3-3 to GD3-17 and GD3-19 et GD3-26).

b) He argued that he thought he would be able to receive employment insurance benefits without having to describe what had really happened at the end of his employment and that he had not wanted to make trouble. The Appellant explained that he had subsequently "told the rest" after having realized that he would not qualify for benefits given the reasons he had first provided regarding payment for the overtime he had worked.

c) The Appellant explained that he had had a great deal of trouble accepting his colleagues' lifestyle, watching them "party", drink alcohol and take drugs throughout the week. The Appellant said that he had not spoken to his employer about this problem because he knew that the Employer was aware of the situation and had not intervened (Exhibits GD2-5, GD2-6 and GD3-26).

d) He stated that he had carried out a number of job searches before leaving his employment voluntarily. He explained that he had started looking for jobs about three weeks before he left voluntarily. He stated that he had carried out these searches using the Internet (e.g., Indeed, Kijiji) on weekends because he had not had access to the Internet (i.e.: no computers available) where he was living during his work week. The Appellant pointed out that it had therefore been difficult to contact potential employers directly under these conditions. He had applied to dozens of potential employers before leaving the employment he had. The Appellant explained that he had applied to the following construction companies: Flint, Callisto and Pechnation. He indicated that he had thought he would find employment quickly but that he had not received an offer of employment from any of the employers to which he had offered his services. He explained that because he had thought he would be hired somewhere, he had told his employer that he was leaving his employment to take other employment. He mentioned that he had returned to Quebec several months after he left his employment, specifically, in July 2015 (Exhibits GD3-3 to GD3-17, GD3-19 and GD3-26).

[17] The Respondent (the Commission) made the following observations and submissions:

a) Subsection 30(2) of the Act provides for an indefinite disqualification when the claimant leaves his employment voluntarily without *just cause*. The test to be applied, having regard to all the circumstances, is whether the claimant had no reasonable alternative to leaving his employment when he did.

b) In this case, the claimant had first mentioned that he had left his employment because of excessive overtime and because he was not being paid at the “time and a half” rate. He had been informed of this practice when hired, as the Employer had told him about it. The claimant had then added the use of drugs by his colleagues in the house during the week. When questioned about this matter, the Employer stated that the claimant had never informed it of these problems.

c) In this appeal before the Tribunal, the claimant added the aspect that his safety was at risk and that he had not felt safe in the situation, as well as having been the target of jokes by his colleagues.

d) In this case, the Commission concluded that the claimant did not have just cause to leave his employment on December 20, 2014 because he had not exhausted all reasonable alternatives before leaving. In light of the evidence, a reasonable alternative to leaving his employment might have been to discuss the problems with his employer regarding his concerns about his safety and his dissatisfaction with his pay and overtime. He could also have consulted the Labour Board. He could have first found other employment in another location. The claimant did not agree with the request to wash the trucks before returning to the house and had decided not to return there after that particular weekend. If he had really had concerns and the problems mentioned to the Commission, why wait six months before resigning? The Commission believes that the reasons invoked may be valid but that the claimant failed to prove that his only alternative was to resign at the time that he did. Consequently, the claimant failed to prove that, under the Act, he had just cause to resign (Exhibits GD4-2 and GD4-3).

ANALYSIS

[18] In *Rena Astronomo* (A-141-97), which confirmed the principle established in *Tanguay* (A-1458-84) that the onus is on the claimant who voluntarily left his employment to prove there was no reasonable alternative to leaving his employment when he did, the Federal Court of Appeal (the "Court") issued the following reminder: "The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to immediately leaving his or her employment."

[19] This principle has been confirmed in other decisions of the Court (*Peace*, 2004 FCA 56; *Landry*, A-1210-92).

[20] Moreover, the term "just cause", as used in subsections 29(c) and 30(1) of the Act, was interpreted by the Court in *Tanguay v. UIC* (A-1458-84 (October 2, 1985); 68 N.R. 154) as follows:

> In the context in which they are used these words are not synonymous with "reasons" or "motive". An employee who has won a lottery or inherited a fortune may have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment,

> and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.

[21] The Court also holds that the onus is on the claimant who voluntarily left his employment to prove that there was no reasonable alternative to leaving his employment at that time (*White*, 2011 FCA 190).

[22] A claimant has just cause to leave his employment voluntarily if, having regard to all the circumstances, including those listed in subsection 29(c) of the Act, he had no reasonable alternative to leaving.

[23] In this case, the Tribunal considers that the Appellant's decision to voluntarily leave the employment he held with Mission Electrical Systems Ltd. must be considered the only reasonable alternative in this situation. Under subsection 29(c) of the Act, there existed circumstances justifying his leaving voluntarily (*White*, 2011 FCA 190; *Rena Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, 2004 FCA 56; *Landry*, A-1210-92).

[24] In the Tribunal's view, the Appellant's leaving voluntarily is explained by the existence of "working conditions that constitute a danger to health or safety" and by other circumstances related to the unhealthy work environment in which the Appellant was required to work.

[25] Paragraph 29(c)(iv) of the Act specifically provides that:

> . . . just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following: . . . (iv) working conditions that constitute a danger to health or safety. . . .

[26] The Tribunal finds that the testimony given by the Appellant during the hearing provided a complete and highly detailed picture of the reasons leading to his leaving voluntarily. The Appellant's testimony was detailed and without contradictions.

[27] The Appellant provided a number of clarifications regarding the conditions under which he worked. The Appellant's testimony therefore put the events leading to his voluntarily leaving in context. The Appellant also provided explanations showing that the problem related to the payment of overtime was not linked to his decision to voluntarily leave his employment. He admitted that the payment of overtime had not been the real reason for his leaving voluntarily.

[28] At the hearing, the Appellant explained that he had worked in several different locations for his employer, Mission Electrical Systems Ltd. The Appellant explained that he had worked successively in X from June 2014 to August 2014, then in X from September 2014 to mid-October 2014, and finally in X from mid-October 2014 until he left voluntarily on December 20, 2014.

[29] The Appellant explained that, when he had worked in X, he had had to live with work colleagues during the week in a house located on the worksite because the distance he had to travel between his residence in X and the worksite to which he had been assigned in X was too far.

Dangerous working conditions

[30] The Tribunal believes that the Appellant had just cause to leave voluntarily because of the existence of "working conditions that constitute a danger to health or safety", as provided for in paragraph 29(c)(iv) of the Act.

[31] The Tribunal accepts the Appellant's statements that his health or safety could have been seriously compromised because of the situation he described regarding the use of drugs and the consumption of alcohol by employees of the company for which he worked.

[32] The Appellant's testimony, which was not disputed, indicates that when he was working at the X worksite, from mid-October 2014 until he left voluntarily in December 2014, he was in the presence of colleagues who consumed alcohol or drugs, a situation of which the Employer was aware but with respect to which it took no corrective action.

[33] The Tribunal underscores that, in this location, during his work week, the Appellant was required to live in a house organized by the Employer given that the distance he had to travel to his usual residence in X was too far.

[34] The Tribunal considers that the Appellant's work environment when he worked at the X site was harmful and potentially dangerous to his health and safety.

[35] The Appellant described very clearly the fact that work colleagues who partied during their work week, taking drugs or consuming alcohol, significantly increased the risk of work-related accidents.

[36] He stated that the employees used psychotropic substances (e.g., marijuana), not only in the residence in which he had to live during his work week, but also during their working hours. The Appellant stated that, on several occasions, his foreman reported to work without having slept the previous night.

[37] The Appellant explained that his boss, the person who had hired him, had on several occasions witnessed employees consuming alcohol or taking drugs in the house where he lived during the week. The Appellant stated that even his boss had spent time with the employees who were behaving in this manner and had not taken any particular measures to correct the situation.

[38] The Appellant also explained that he had been deprived of normal hours of sleep because the Employer had not taken the necessary measures to provide him, and other employees, with a suitable and, especially, a safe work environment. The Tribunal believes that the Appellant rightly pointed out the fact that, having been deprived of hours of sleep, there had been an increased risk for him, and for the other employees, that accidents could happen on the worksite.

[39] Moreover, the evidence shows that the Employer did not deny the existence of a problem related to the use of drugs and the consumption of alcohol among members of its personnel when questioned by the Commission. In its statements, the Employer restricted itself to saying that the Appellant had not raised the problem of drug or alcohol use by employees.

[40] The Appellant's testimony clearly indicates that the Employer had been aware of the situation but had not intervened to correct it. After having observed a person in authority, his boss, ignoring the problem, the Appellant could not be expected to raise the issue with his employer.

[41] The Tribunal rejects the Commission's argument that the Appellant should have discussed the workplace health and safety problems with his employer (Exhibits GD4-2 and GD4-3).

[42] Given the work environment in which the Appellant found himself, the Tribunal is of the view that the Appellant cannot be reproached for not taking other measures to point out a problem of which the Employer was already aware and with respect to which it had not intervened.

[43] After having observed that a person in authority had not intervened to ensure that the site at which he worked complied with workplace health and safety rules, it was not the Appellant's responsibility to act as a site inspector responsible for reporting the situation to the government. The Appellant was an employee of Mission Electrical Systems Ltd.

[44] The Appellant demonstrated that the safety issue that he had raised was directly related to the consumption of drugs and alcohol by the employees, and that it was a problem of which the Employer was aware and on which it had taken no action.

[45] The Tribunal is of the opinion that the evidence shows that the Employer was not able to provide a work environment offering adequate protection in terms of the health and safety of the employees in its employ.

[46] In this context, the Tribunal finds that, even if the Appellant had been given another assignment, there is no indication that he would have been able to carry out his work safely. The Employer itself contributed to breaking the relationship of trust that may have existed between it and the Appellant.

[47] In the Tribunal's view, the Appellant clearly demonstrated having to work in working conditions that constituted a potential danger to his health or safety under paragraph 29(c)(iv) of the Act.

Other circumstances

[48] The Tribunal notes that, in addition to the circumstances listed in subsection 29(c) of the Act, to determine if there was just cause to leave voluntarily under the Act, other circumstances may also justify leaving voluntarily. The list of circumstances in subsection 29(c) of the Act is not exhaustive.

[49] The Tribunal considers that, in the case before it, other circumstances demonstrate that the Appellant had no alternative to leaving voluntarily the employment that he held while working at the X worksite. These circumstances relate to the harmful work environment in which the Appellant found himself and the intimidation he experienced.

[50] The Tribunal believes that being required to live in a residence organized for employees was an integral part of the Appellant's working conditions when he was in X, as it was when he carried out his work for the same employer at the site in X at the start of his employment.

[51] The Appellant pointed out the major differences between the conditions in which he worked when assigned to X and those in which he later found himself when he worked at the X site.

[52] The Appellant explained that when he had worked in X, he had been able to carry out his work without any particular problems with the colleague with whom he had shared a room in a hotel at that location. However, the situation was quite different when he was assigned to work at the X site.

[53] The Tribunal considers that the Appellant very clearly demonstrated that, with respect to the duties that he had been required to perform at the X site, he had had to work in a harmful work environment to which he was confined until the moment that he had left voluntarily.

[54] The Appellant clearly explained how he no longer had adequate basic conditions to be able to carry out his work normally (e.g., deprived of sleep, frequently disturbed by the behaviour of colleagues in the house where he had to reside during the week).

[55] The Tribunal rejects the Commission's argument that the Appellant waited six months before quitting his employment. The Tribunal notes that the problems raised by the Appellant refer specifically to the situation he experienced after having been assigned to the X site, that is, as of mid-October 2014.

[56] The Appellant pointed out that, even after having seen that employees were consuming alcohol and taking drugs, the Employer took no specific action to correct the situation.

[57] The Appellant also explained that he did not want to intervene any further with his employer in this regard. The Appellant explained that he felt intimidated by his fellow workers and by his boss but had not wanted to be liked any less by them and had not wanted to "make trouble".

[58] The Appellant explained that when he had worked in X, his work colleagues and his boss laughed at him. He stated that he had been the subject of comments by them about his mother tongue ("frenchy") and that he had also been assigned a political orientation ("separatist").

[59] The Appellant also explained that the day that he left voluntarily, after having completed his work week, the Employer had ordered him to wash the company vans without paying him for that work (Exhibit GD3-24).

Search for other employment

[60] The Appellant's testimony also demonstrated that he had not left his employment precipitously. He had searched for employment for several weeks before leaving the employment he held, and after having assessed the situation in which he found himself.

[61] The Appellant explained that, during his work week, he had not had a computer or access to the Internet at the house where he was living. Despite the constraints he faced, he had carried out several job searches when he returned to his residence on the weekend.

[62] The Tribunal is of the opinion that the Appellant made sustained efforts to try to obtain other employment before leaving the employment he had, even though his efforts were unsuccessful. The Appellant had tried other alternatives before leaving voluntarily.

[63] Having regard to the particular circumstances brought to its attention in this case, the Tribunal concludes that the Appellant had no reasonable alternative to leaving voluntarily in this situation.

[64] The Appellant was forced to work in conditions that constituted a danger to his health and safety as set out in paragraph 29(c)(iv). The unhealthy work environment in which the Appellant was required to work and the problems of intimidation that he faced also represent circumstances justifying his leaving voluntarily.

[65] The Tribunal is of the opinion that the Appellant could not be compelled to continue to work in an unhealthy environment that might compromise his health and safety, as was the case during his period of work at the X site from mid-October 2014 to December 2014.

[66] In the Tribunal's view, the last task that the Appellant was required to carry out for his employer in that location represented the last straw such that he had no reasonable alternative to leaving his employment when he did.

[67] Based on the above-mentioned case law, the Tribunal is of the view that the Appellant demonstrated that he had no reasonable alternative to leaving his employment with the Employer, Mission Electrical Systems Ltd. (*White*, 2011 FCA 190; *Rena Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, 2004 FCA 56; *Landry*, A-1210-92).

[68] The Tribunal concludes that, having regard to all the circumstances, the Appellant had just cause to voluntarily leave his employment under sections 29 and 30 of the Act.

[69] The appeal on the issue has merit.

CONCLUSION

[70] The appeal is allowed.

Normand Morin
Member, General Division – Employment Insurance Section